

## REMARKS

Claims 53-74 are pending in the current application and have been rejected. Reconsideration is requested.

Claims 53-74 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 34-54 of U.S. Patent No. 6,558,400 to Deem. A terminal disclaimer is being filed concurrently herewith in compliance with 37 C.F.R. §1.321(c) to obviate these double patenting rejections.

Claims 53, 55-64 and 66-70 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Kuzmak et al., U.S. Pat. No. 4,696,288. Applicant respectfully traverses this rejection.

Kuzmak discloses a calibrating apparatus 20 that is inserted into the stomach, where a balloon 26 is inflated within the stomach to a selected diameter, so that an adjustable gastric band 140 can be applied around the periphery of the stomach and adjusted to the appropriate size using the calibrating apparatus. See FIGS. 14a-14d and col. 10, line 1 through col. 11, line 19 of Kuzmak. Kuzmak does not disclose a method for reducing the volume of a stomach cavity including the following limitations of independent claim 53:

positioning a device trans-orally to a position within the stomach cavity;  
acquiring tissue from the interior of the stomach cavity with the device; and  
forming a pouch by securing the acquired tissue.

The calibrating apparatus 20 in Kuzmak is positioned within the stomach cavity, but it does not acquire tissue from the interior of the stomach cavity and the calibrating apparatus does not form a pouch by securing acquired tissue. Therefore, claim 53 and those claims depending therefrom are allowable over Kuzmak.

Independent claim 64 recites in-part:

positioning a device trans-orally to a position within the stomach cavity;  
acquiring tissue from at least two areas of the interior of the stomach cavity using  
the device.

As discussed above, Kuzmak does not disclose or suggest positioning a device trans-orally within the stomach cavity and then using that device to acquire tissue from the interior of the stomach cavity. Therefore, claim 64 and those claims that depend therefrom are allowable over Kuzmak.

Claims 54, 65, and 71-74 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuzmak. The previous arguments are reasserted here. Claim 54 depends from claim 53, and claim 65 depends from claim 64, and both are therefore also allowable because Kuzmak does not disclose or suggest all of the limitations found in independent claims 53 and 64. Further, independent claim 71 recites "positioning a device trans-orally to a position within the stomach cavity[, and] acquiring tissue from the interior of the stomach cavity with the device." Kuzmak does not disclose or suggest positioning a device trans-orally within the stomach cavity and then using the device to acquire tissue from the interior of the stomach cavity. Therefore, claim 71 and those claims that depend therefrom are patentable over Kuzmak.


In view of the foregoing, Applicant respectfully submits that all pending claims are now in condition for allowance. Reexamination and reconsideration of the application are respectfully requested and allowance at an early date is solicited.

The Commissioner is authorized to charge deposit account no. 06-2425 for any unforeseen fees arising from the filing of this paper.

Respectfully submitted,

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